

Who has the Right of Disposition after a Death?

Occasionally a conflict arises when a person who has the power of attorney before a death occurs assumes that the power of attorney continues after death.

Washington State Law is clear about the order in which the power of disposition must proceed:

Revised Code of Washington - RCW 68.50.160

Right to control disposition of remains — Liability of funeral establishment or cemetery authority — Liability for cost.

(1) A person has the right to control the disposition of his or her own remains without the predeath or postdeath consent of another person. A valid written document expressing the decedent's wishes regarding the place or method of disposition of his or her remains, signed by the decedent in the presence of a witness, is sufficient legal authorization for the procedures to be accomplished.

(2) Prearrangements that are prepaid, or filed with a licensed funeral establishment or cemetery authority, under RCW [18.39.280](#) through [18.39.345](#) and chapter [68.46](#) RCW are not subject to cancellation or substantial revision by survivors. Absent actual knowledge of contrary legal authorization under this section, a licensed funeral establishment or cemetery authority shall not be held criminally nor civilly liable for acting upon such prearrangements.

(3) If the decedent has not made a prearrangement as set forth in subsection (2) of this section or the costs of executing the decedent's wishes regarding the disposition of the decedent's remains exceeds a reasonable amount or directions have not been given by the decedent, the right to control the disposition of the remains of a deceased person vests in, and the duty of disposition and the liability for the reasonable cost of preparation, care, and disposition of such remains devolves upon the following in the order named:

(a) The person designated by the decedent as authorized to direct disposition as listed on the decedent's United States department of defense record of emergency data, DD form 93, or its successor form, if the decedent died while serving in military service as described in 10 U.S.C. Sec. 1481(a) (1)-(8) in any branch of the United States armed forces, United States reserve forces, or national guard;

(b) The designated agent of the decedent as directed through a written document signed and dated by the decedent in the presence of a witness. The direction of the designated agent is sufficient to direct the type, place, and method of disposition;

(c) The surviving spouse or state registered domestic partner;

(d) The majority of the surviving adult children of the decedent;

(e) The surviving parents of the decedent;

(f) The majority of the surviving siblings of the decedent;

(g) A court-appointed guardian for the person at the time of the person's death.

(4) If any person to whom the right of control has vested pursuant to subsection (3) of this section has been arrested or charged with first or second degree murder or first degree manslaughter in connection with the decedent's death, the right of control is relinquished and passed on in accordance with subsection (3) of this section.

(5) If a cemetery authority as defined in RCW [68.04.190](#) or a funeral establishment licensed under chapter [18.39](#) RCW has made a good faith effort to locate the person cited in subsection (3)(a) through (g) of this section or the legal representative of the decedent's estate, the cemetery authority or funeral establishment shall have the right to rely on an authority to bury or cremate the human remains, executed by the most responsible party available, and the cemetery authority or funeral establishment may not be held criminally or civilly liable for burying or cremating the human remains. In the event any government agency or charitable organization provides the funds for the disposition of any human remains, the cemetery authority or funeral establishment may not be held criminally or civilly liable for cremating the human remains.

(6) The liability for the reasonable cost of preparation, care, and disposition devolves jointly and severally upon all kin of the decedent in the same degree of kindred, in the order listed in subsection (3) of this section, and upon the estate of the decedent.